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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services)

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REPLY COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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Summary

Mandatory resale for the paging market is neither necessary nor warranted. It would be detrimental to paging carriers and subscribers alike and utterly devoid of any public purpose. In short, mandatory resale is a solution searching for a problem in the paging market.

Paging Network, Inc. ("PageNet") has long been a strong voice in opposing all resale obligations on paging. Other parties' comments in this proceeding support PageNet's position. The paging industry's highly competitive nature is the compelling basis for refraining from extending mandatory resale policies to paging. While the most common reason cited in the comments for extending resale to all CMRS offerings was to promote competition generally or to gain specific benefits from such competition, those conditions and benefits already bountifully exist in the paging market. More specifically, price discrimination is not present, head start problems are not relevant, new technological advances and new services are being brought to the market, and demand for service is great.

Conversely, mandatory resale would adversely affect paging subscribers and carriers in a number of ways. Quality of service, growth projections and facility planning would be adversely impacted by unanticipated resellers' demands.

Attempts to use regulatory parity as a basis for imposing mandatory resale on all CMRS offerings, including paging, must fail. Regulatory parity is not an end unto itself. It is not a statutory directive that is to be followed by the Commission at all costs regardless of the practical implications of lock step regulation. Rather, it is a means to be evaluated which, in the case of paging, leads to the conclusion that the goals sought to be achieved by mandatory resale have already been accomplished.

The record clearly does not support mandatory resale for paging. The Commission should let this highly competitive market continue to operate to the benefit of the public.

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REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding, FCC 95-149, released April 19, 1995 ("Second Notice").

Throughout this proceeding, PageNet has strongly advocated that the Commission not impose any resale obligations on paging. PageNet has steadfastly maintained that the highly competitive paging market already embodies the characteristics that other markets have achieved through resale. Most recently, in its Comments, PageNet substantiated that the Commission's reasons for requiring resale in other services simply do not exist in paging today. The Commission's goals for resale in the commercial mobile services ("CMRS") market have already been achieved as a result of the paging market's competitive forces and the Commission's policies of open entry and spectrum allocation. To impose mandatory resale in the paging market would constitute unwarranted government intervention. It would be detrimental to the paging customer and carrier. Such a mandatory policy would be regulation for regulation's sake and devoid of any valid public purpose.

their opposition to mandatory resale for paging on this important fact. ^{4/} Of those parties who do advocate imposing resale on CMRS offerings, the most common justification is to promote competition or to obtain consumer benefits from such competition. ^{5/} It is ironic that Ameritech, one of the four parties advocating mandatory resale for paging, specifically relied on enhancing competition as the reason for imposing a time limit on mandatory resale for facilities-based carriers. ^{6/} If nothing else, this serves as evidence of the importance of competition to this issue.

^{4/} Comments of AirTouch Communications, Inc. ("AirTouch") at 17, AMTA at 9, AT&T Corp. ("AT&T") at 26-28, BellSouth at 7, Geotek Communications, Inc. ("Geotek") at 4-5, MobileMedia at 3-4, 7, Nextel at 8-10, and the Personal Communications Industry Association ("PCIA") at 10-12. GTE Service Corporation ("GTE") at 16-22 and In-Flight Phone Corporation ("In-Flight") at 5-8 argued that air-ground service should not be subject to mandatory resale, partially on the basis that such market is competitive with three providers. GTE went one step further and argued that all other CMRS offerings should be subject to mandatory resale. Certainly if air-ground service with only three providers should be exempt from mandatory resale, paging with from five to nineteen providers should, without question, not be subject to mandatory resale.

^{5/} Comments of Comcast Cellular Communications, Inc. ("Comcast") at 26, ITAA at 3, 5-6, LDDS Worldcom, Inc. ("LDDS") at 2, New Par ("New Par") at 22-23, Rural Cellular Coalition ("Rural Cellular") at 6, Southern Company ("Southern") at 6, Southwestern Bell Mobile ("SWBell") at 18, and TRA at 15-18. These parties for the most part took a broad-brush approach to CMRS resale generally or focused on broadband PCS. They were not thinking about paging. One party, TRA, acknowledged the Commission's finding that paging is highly competitive, but advocated the imposition of a higher standard, that a market must be found to be "perfectly competitive" to not impose resale. This is unreasonable and a play on semantics. It ignores the realities of the paging market and does not justify imposition of mandatory resale for paging.

^{6/} Ameritech at 7. See §II, infra.

Since it is undisputed that competition exists in the paging market, the primary objective for mandatory resale has been achieved without regulatory intervention. There is simply no reason for the Commission to impose a solution for which there is no problem, ^{7/} or address a danger that is not likely to arise. ^{8/}

**B. The Paging Market Does Not Need
Mandatory Resale to Achieve Other Benefits**

In its comments, PageNet systematically dispelled all remaining potential benefits that mandatory resale would even arguably bring to the paging market. Price discrimination does not exist in paging. ^{9/} In fact, competition in the paging market assures that providers have the ability to reduce prices to customers. ^{10/} Indeed, prices have been driven substantially downward.

Head start issues are not relevant in paging, since they simply do not exist based on the Commission's licensing and spectrum availability policies. ^{11/} In paging, spectrum has been allocated and applied for according to carriers' needs. This creates a situation where the timing of the licenses is different, markets overlap, and build-out requirements are different. These facts eviscerate head start problems for paging. Of those parties

^{7/} Mobile Media at 4.

^{8/} Geotek at 7.

^{9/} PageNet at 7-8.

^{10/} AirTouch at 18, BellSouth at 10, PCIA at 12.

^{11/} PageNet at 8-9.

who rely on head start problems as justification for mandatory resale, they almost exclusively focus on cellular and broadband PCS. ^{12/}

In its Comments, PageNet set forth a substantial description of technical advances and resultant new messaging services that are already benefitting the public. ^{13/} These are all being achieved without a mandatory resale policy. In fact, they are likely being realized because of the absence of such a policy.

Similarly, demand for paging services is at an all-time high. ^{14/} As Mobile Media pointed out, paging provides almost ubiquitous coverage, ^{15/} which contributes to the increasing demand for service. Any attempt to stimulate demand by regulatory intervention would be unwarranted and inadvisable.

These factors taken together paint an accurate and detailed picture of a highly competitive paging market, one that would not benefit from mandatory resale. Furthermore, not mandating paging resale would benefit the public and would not be violative of either Section 201(b) or 202(a) of the Communications Act.

^{12/} Pacific Bell states that head start will not exist in PCS, since all licenses are to be auctioned at approximately the same time, and, therefore, this should not be relied upon as a basis for mandatory resale. Pacific Bell at 8.

^{13/} PageNet at 9-10. See also AirTouch at 17-18.

^{14/} PageNet at 11.

^{15/} Mobile Media at 3.

**II. MANDATORY RESALE WOULD ADVERSELY
AFFECT PAGING CARRIERS AND THE PUBLIC**

The positive aspects of the paging market, developed absent a mandatory resale policy, are evident in practice and have been fully described on the record in this proceeding. Such a policy would have a detrimental effect on both subscribers and carriers, as PageNet fully described. 16/

One such major impact on the carrier and subscribers alike would be the unanticipated demand of resellers for capacity and the impact it would have on a carrier's growth projections and facility planning. This would, in turn, adversely impact the quality of paging service provided by the underlying carrier and reseller. For instance, if a reseller were to load alpha pagers or a substantial number of slow 512 baud paging units, the underlying system could become unduly loaded. If a reseller were to add a new protocol to a FLEX channel, inefficiencies would result, since FLEX is most efficient as a FLEX-only channel. However, with mandatory resale, the underlying carrier would not have control over the resellers' use of the facilities and inefficiencies would most certainly result.

The negative effects on subscribers would be equally harmful if the goals of stimulating competition and promoting more efficient use of the spectrum are not achieved, or if a carrier relies on a competitor's facilities to offer service.

16/ PageNet at 12-15.

It is significant that the overwhelming response to the Commission's proposal to limit mandatory resale to a specific period of time for facilities-based carriers was favorable, including those advocating some form of CMRS resale. Of those parties who specifically advocated mandatory paging resale, half favored a sunset on the resale requirements for CMRS facilities-based carriers. ^{17/} None specifically addressed the paging market in this regard. The reason given by the opponents of the limitation was to foster competition. Interestingly, the reason given by Ameritech for favoring a limitation was to enhance competition. Both these arguments demonstrate the importance that these parties attach to competition in the particular CMRS market as a basis for imposing mandatory resale. As PageNet has demonstrated, since the paging market is already highly competitive, these parties' concerns have been addressed and, by their own standards, mandatory resale is inappropriate.

PageNet and a number of other parties opposed to mandatory resale indicated that voluntary resale does exist in the industry, ^{18/} which is a significant and increasing source of paging sales. For PageNet, the subscriber base placed in service by resellers was 44% at the end of 1994, with resellers providing 61% of PageNet's net unit additions that year. This is contrasted to 26.5% of PageNet's subscriber base placed in service by

^{17/} See Ameritech at 7, CTIA at 25; but see ITAA at 7, TRA at 17-18.

^{18/} PageNet at 15, AirTouch at 18, AMTA at 9, E.F. Johnson at 3, MobileMedia at 3, PCIA at 10, 12-13.

resellers at the end of 1992, and further contrasted to a mere 5% of PageNet's subscriber base coming from resellers in 1990. Such figures are evidence of a robust and growing voluntary resellers' market in paging. Voluntary resale relationships in the paging industry allow the underlying carrier to maintain the quality and availability of service to its own subscribers. This would not be the case with mandatory resale.

III. REGULATORY PARITY DOES NOT JUSTIFY MANDATORY RESELL FOR PAGING

Regulatory parity was relied upon by a number of parties as a basis for extending cellular resale requirements to all CMRS providers. Two of those, Ameritech ^{19/} and CTIA, ^{20/} specifically mentioned the inclusion of paging or messaging services. CTIA maintained that no distinction between broadband and narrowband services is relevant for regulatory parity. CTIA further contended, basing its contention on customer perception, that such services are reasonable substitutes, which makes them functional equivalents. ^{21/}

Regulatory parity is not a statutory directive that is to be achieved at all costs and in disregard of the practical effects of uniform regulation. For instance, some services require less spectrum than others, some limit communication to one-way, and

^{19/} Ameritech at 6.

^{20/} CTIA at 22-24.

^{21/} CTIA at 24. TRA disagrees with CTIA. In its Comments at 19, CTIA emphatically stated, "Clearly, paging service providers do not compete with cellular providers due to the dramatically different nature of the services they provide."

transmission capabilities and subscriber units are different. Such factors belie uniform regulation. When Congress adopted the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") and amended Section 332 of the Communications Act, it envisioned a comprehensive regulatory framework for all mobile radio services. With regard to CMRS, the Conference Report stated that "differential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section [§332]." ^{22/} The Conference Report also stated that "The purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. [T]his provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier." ^{23/} In the proceeding to implement this provision, the Commission determined that the revised Section 332 gave it authority to establish categories of CMRS and to adopt regulations that vary among such classes and that differ for individual service providers within a class. ^{24/}

In implementing this provision, the Commission has adopted or retained different regulations for different classes of CMRS. Parts 22, 24, 88 and 90 contain various regulations for different

^{22/} H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. (1993) ("Conference Report") 491.

^{23/} Id.

^{24/} Regulatory Treatment of Mobile Services, Notice of Proposed Rule Making, 8 FCC Rcd 7988, 7999 (1993), Second Report & Order, 9 FCC Rcd 1411, 1418-19.

CMRS offerings. This proceeding is another instance where the Commission is rightly considering what degree of mandatory resale and interconnection requirements are appropriate and necessary for different CMRS offerings. Thus, the Commission not only recognizes but has implemented the finding that the regulatory parity provision is an overall guideline to be followed when circumstances warrant.

In the case of mandatory resale for paging service, regulatory parity does not dictate its imposition. Rather, it only calls for an inquiry into the appropriateness of the proposal to the specific service. The Commission has recognized that characteristics of the paging market make imposition of mandatory resale questionable. Indeed, the record in this proceeding establishes that mandatory resale is inappropriate for paging, regardless of whether such a policy is applied to other CMRS offerings. This is so because the paging market is highly competitive. The objective to be achieved by mandatory resale already exists in paging. CTIA even recognizes that "competition is the proper focus" of resale.^{25/} Regulatory parity cannot be invoked as an end in itself when the objective has been achieved for a particular service.

IV. CONCLUSION

The record has clearly demonstrated that mandatory resale for paging is neither appropriate nor lawful. The highly competitive nature of the paging market means that the public is already

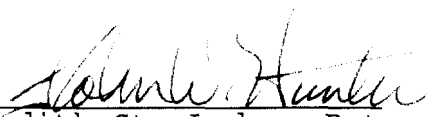
^{25/} CTIA at 25.

receiving the benefits that might otherwise be expected from such a policy. Not only is such a mandatory policy unnecessary for paging, it would also be violative of Sections 201(b) and 202(a) of the Communications Act. The Commission should simply not impose this repressive regulation on the paging industry.

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July 14, 1995

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